

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 62/AIL/Lab./J/2010, dated 25th March 2010)

NOTIFICATION

Whereas, the award in I.D. No. 1/2003, dated 13-11-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Hindustan Lever Limited (Personal Products), Vadamangalam, Puducherry and its workmen Thiruvalargal P. Vijayan and D. Paranthaman represented by Hindustan Lever Limited Thozhilalar Munnetra Sangam over their non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

*Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.*

Friday, the 13th day of November 2009

I.D. No. 1/2003

The President,
Hindustan Lever Thozhilalar
Munnetra Sangam, Pondicherry . . Petitioner

Versus

The General Manager,
Hindustan Uni-Lever Limited,
Personal Products Factory,
Pondicherry . . Respondent

This industrial dispute coming on 9-11-2009 for final hearing before me in the presence of Thiru G. Mohan Keerthi Kumar, Advocate for the petitioner and as per order in I.A. No. 9/2010, dated 10-2-2010

Mr. L. Sathish, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.19/Lab/2003/AIL/J, dated 19-2-2003 for adjudication of the following industrial dispute that arose between the management of Hindustan Lever Limited, Vadamangalam, Pondicherry and its workman represented by the President, Hindustan Lever Thozhilalar Munnetra Sangam adjudicating the following:—

(a) Whether the claim of the union that Thiruvalargal P. Vijayan and D. Paranthaman were directly engaged by the management of M/s. Hindustan Lever Limited (Personal Products), Vadamangalam, Pondicherry is justified or not?

(b) If justified, to what relief the said workmen are entitled to for their non-employment?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has averred as follows:—

The petitioner has stated that the workmen P. Vijayan and D. Paranthaman were in the service of the respondent company respectively for 12 years and 6 years and they were doing the work of loading and unloading of goods in the respondent company. The said two workmen along with ten others were stopped at the gate on 11-11-2000 and they were not given employment with effect from the said date on the ground that they have joined the petitioner union. The management refused to take the said two workmen back, but re-employed other ten workmen. The management claim that these two workmen were not under their direct employment and they were working under M/s. Lena Contractors is concocted story for the purpose of defeating the claim of the petitioner. Hence, the petitioner prays for reinstatement of the said workmen.

3. In the counter statement filed by the respondent, it is contended that the recital to the reference would show that what has been referred are two disputes raised by P. Vijayan and D. Paranthaman and therefore what is referred can only be an individual dispute under

2A of the Industrial Disputes Act. If the reference is about two industrial disputes raised by the said workmen, then it is not permissible for them to invite this court to go into the question whether or not they were directly engaged by the management of Hindustan Lever Limited.

One N.K. Swaminathan, who was working as a Manager of City Transport formed a proprietary concern, by name Lena Contractor and came forward to arrange man power for loading and unloading operations. The respondent used to pay charges to Lena Contractor on tonnage basis for the unloading the materials. Due to some internal problems, the respondent company terminated the contract of Lena Contractor on 12-12-2002 and one Baktha Security Service was engaged from 15-12-2000. The said Baktha Security Service came forward to engage such of erstwhile workmen of Lena Contractor on application in writing offering their services. Accordingly all the 12 workmen of Lena Contractor including the said two workmen gave letters to Baktha Security Service offering their service. However, while 10 of them reported for work, the said P. Vijayan and D. Paranthaman, for the reasons best known to them, did not evince interest to really work for Baktha Security Service. The said workmen were engaged by Lena Contractor and later on all the contract workmen barring P. Vijayan and D. Paranthaman offered to work under Baktha Security Service and they continued to work under the said contractor. Hence, he prays for dismissal of the petition.

4. The point for determination is:

Whether the claim of the union that P. Vijayan and D. Paranthaman were directly engaged by the management of M/s. Hindustan Lever Limited, Vadamangalam, Pondicherry is justified or not?

5. On the point:

The claim of the petitioner is that the respondent company willfully refused to give work to the said two workmen, by name P. Vijayan and D. Paranthaman, though they were in the employment of the respondent company directly for the last 12 and 6 years respectively. The management disputed this contention that these two workmen were under their direct employment. Instead, it is their case that these two workmen are not under their employment, but contract workers engaged by Lena Contractors and Baktha Security Service. It is further case of the management

that it is not uncommon on the part of the industrial units to engage contractors in connection with their work of loading and unloading operations. The contractual employment of labour force is not prohibited or is not illegal.

6. The contention of the respondent/management is that the claim of the petitioner appears more on technical in nature rather than substantial. Initially, these two workmen were engaged by the principal employer. Subsequently, the management might have entered into contract with Lena Contractors and Baktha Security Service and those persons, who were in the employment of respondent company could have been forced to get into the employment under the contractor in spite of employment with the principal employer. In support of their contention, the respondent produced Ex.R38 copy of the letter by Umanand Acharya Security, dated 25-12-2000 and Ex.R39, copy of the application by Paranthaman to Baktha Contractor for employment to show that these two workmen had conveyed their willingness to work as contractual labour under Baktha Service. Though they produced the letters, obtained from the said workmen as well as from the other workmen, the fact remains that these two workmen were initially engaged by the principal employer and subsequently they might have forced the workers to opt for contractual employment, after the principal employer had entered into contract for loading and unloading operations with Lena Contractors and subsequently with Baktha Security Service. The fact that they were initially engaged for nearly 10 years and six years goes to show that the moment they completed the minimum days of continuous employment under the principal employment as provided under law, it is to be treated for all practical purposes that they continued to be under employment of principal employer. In fact on perusal of Ex.R47, photocopy of the register of wages for January 1999 to November 2000, shows that two workers Vijayan and Paranthaman are in the employment of Hindustan Lever Company. At the end of Ex.R47, the following endorsement is found:—

“The contractor had approached to pay the wages to these personnels on 4-12-2000 p.m. and on 5-12-2000 a.m. But the people represented by their Maistry and Vijayan etc., refused to take the wages and sign the register.”

This itself goes to show that the said two workmen were under the employment of principal employer. When they were initially engaged as employees of the

principal employer, it is not open to the respondent to make them opt for contractual labour under some contractor with whom the principal employer might have entered into some kind of contract for loading and unloading operations in connection with running their industrial unit. Their liability to retain the workers under the direct employment continues. It is not open to the respondent management to compel them to become the workers under contractor instead of being workers under them directly. This amounts to unfair trade practice. The Labour Court cannot be expected to come to the rescue of the management, when such is the course adopted by them to camon pilage their ulterior motive. This conduct of the respondent management in compelling them to opt for contractual labour is to be discouraged if not condemned. This court feels that they have flouted on norms of fair play, when their contention is based on a make believe affair that these two workers were not under the direct employment, but were under the employment of contractors Lena Contractors or Baktha Security Service. The contention of the respondent cannot be accepted. The pathetic condition of the petitioner workmen namely P. Vijayan and Paranthaman has to be considered and they have to be reinstated with full back wages. Accordingly, this point is answered.

7. In the result, this industrial dispute is allowed and the respondent is hereby directed to reinstate the petitioners by name P. Vijayan and D. Paranthaman as labourers of their company within three months from the date of this award and the respondent company is also hereby directed to pay back wages to the claim petitioners from the date of refusal of employment *i.e.* from 11-11-2000.

Typed to my dictation, corrected and pronounced by me in the open court on this the 13th day of November, 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

Petitioners side witnesses :

PW.1 Gunasegaran

Respondent side witnesses :

RW.1 K. Soundararajan

Petitioner's side exhibits:

- Ex.P1 Conciliation failure report, dated 1-11-2001.
- Ex.P2 Section 10 reference, dated 19-2-1993.
- Ex.P3 Letter, dated 10-7-2001.
- Ex.P4 Copy of E.S.I. Card of one Gunasekaran, dated 4-11-1986
- Ex.P5 Copy of the Subscriber Annual Statement of Account for the year 2001-02.
- Ex.P6 Copy of the E.S.I. Card of P. Vijayan, dated 9-11-1993.
- Ex.P7 Copy of the E.S.I. Card of Paranthaman, dated 1-9-1997.
- Ex.P8 Copy of Subscriber Annual Statement of Account for the year 1995-96 of P.Vijayan.
- Ex.P9 Copy of Subscriber Annual Statement of Account for the year 1999-2000 of Paranthaman.
- Ex.P 10 Copy of Subscriber Annual Statement of Account for the year 1999-2000 of Paranthaman.

Respondent's side exhibits:

- Ex.R 1 Signature of Vijayan in copy of letter.
- Ex.R 2 Signature of Paranthaman in copy of letter.
- Ex.R3 Signature of Vijayan in copy of Letter.
- Ex.R4 Signature of Paranthaman in stamped wages receipt.
- Ex.R5 Signature of Vjjayan in stamped wages receipt.
- Ex.R6 Signature of Paranthaman in copy of letter, dated 27-12-2000.
- Ex.R7 Signature of Vijayan in copy of letter, dated 27-12-2000.
- Ex.R 8 Letter of authorisation.
- Ex.R 9 Copy of Certificate of Registration, dated 21-2-1995.
- Ex.R 10 Copy of letter, dated 5-5-1995.
- Ex.R 11 Copy of service contract between Pond's India Limited and Lena Contractor for January 1998 to December 1998, dated 1-1-1998.
- Ex.R 12 Copy of service contract between Pond's India Limited and Lena Contractor for January 1999 to December 1999, dated 1-1-1999.

Ex.R 13	Copy of service contract between Pond's India Limited and Lena Contractor for October 1999 to September 2000, dated 1-10-1999.	Ex.R 38	Copy of letter, dated 25-12-2000.
Ex.R 14	Copy of Certificate of Registration (Amendment) for 1998-99.	Ex.R 39	Copy of the letter of Paranthaman, dated 27-12-2000.
Ex.R 15	Copy of the original Certificate of Registration (Amendment) from 1-4-1999 to 31-12-1999.	Ex.R 40	Copy of the application by Vijayan, dated 27-12-2000.
Ex.R 16	Copy of service contract between Pond's India Limited and Lena Contractor for September 2000 to August 2001, dated 1-9-2000.	Ex.R 41	Copy of the Notice by Inspector of Factories to H.L.L., dated 5-1-2001.
Ex.R 17	Copy of the Certificate of Registration (Amendment) for year, dated 24-7-2000.	Ex.R 42	Copy of the reply, dated 19-2-2001.
Ex.R 18	Copy of the letter, dated 2-4-2003.	Ex.R 43	Copy of the letter, dated 20-4-2001
Ex.R 19	Copy of the letter, dated 21-6-2000.	Ex.R 44	Copy of the reply, dated 14-7-2001.
Ex.R 20	Copy of the letter, dated 22-6-2000.	Ex.R 45	Copy of the report, dated 1-11-2001.
Ex.R 21	Copy of the letter, dated 22-7-2000.	Ex.R 46	Copy of Muster Roll for January, 2000 to 9-12-2000.
Ex.R 22	Copy of the letter, dated 23-10-2000.	Ex.R 47	Copy of Register of Wages period from 1999 to March 2000 November 2000.
Ex.R 23	Copy of the letter, dated 4-11-2000.	Ex.R 48	True copy of the Certificate of Registration (Amendment), dated 17-12-1997.
Ex.R 24	Copy of the letter, dated 9-12-2000.		
Ex.R 25	Copy of the letter, dated 12-12-2000.		
Ex.R 26	Copy of the letter by Lena Contractor acknowledging termination of contract.		
Ex.R 27	Copy of the letter, dated 3-12-2000.		
Ex.R 28	Copy of the letter, dated 15-12-2000.		
Ex.R 29	Copy of the letter, dated 14-12-2000.		
Ex.R 30	Copy of Certificate of Registration (Amendment) for the year 2001.		
Ex.R 31	Copy of letter, dated 15-12-2000.		
Ex.R 32	Copy of letter, dated 16-12-2000.		
Ex.R 33	Copy of letter, dated 16-12-2000.		
Ex.R 34	Copy of the wage receipt relating to P.Vijayan.		
Ex.R 35	Copy of the wage receipt relating to Paranthaman.		
Ex.R 36	Copy of letter, dated 18-12-2000.		
Ex.R 37	Copy of letter, dated 23-12-2000.		

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
TRANSPORT SECRETARIAT**

(G.O. Ms. No. 5/Tr. Sectt./2010, dated 19th March 2010)

NOTIFICATION

In exercise of the powers conferred by sub-sections (1) and (2) of section 68 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), the Lieutenant-Governor, Puducherry is pleased to extend the period of office of Thiru R.Thiruvengadam, son of Thiru P. Rangasamy, residing at No. 117, Muthumariamman Koil Street, Puducherry-605 001 as Non-Official Member of the State Transport Authority constituted in G.O. Ms. No. 32/89-Wel. (Tr.), dated the 27th June 1989 of the Welfare Secretariat, (Transport), Puducherry for a further period of two years from 29th January 2010.

(By order of the Lieutenant-Governor)

A. VINCENT RAYAR,
Under Secretary to Government (Transport).